

REMARKS

Reconsideration of this application is respectfully requested.

Claims 11, 15, 17, and 19-35 were rejected under 35 U.S.C. § 112, first paragraph, for allegedly containing subject matter that was not described in the specification in such a way as to reasonably convey to the skilled artisan that the inventors had possession of the claimed invention at the time the application was filed. The Examiner summarizes the rejection as follows: "The issue raised in this application is whether the original application provides adequate support for the expression and purification of the identified viral proteins, as well as, the purified antibodies directed thereto." (Office Action at 2.) Applicants traverse the rejection.

The Examiner's position is untenable in view of the recent decision in *Noelle v. Lederman*, 355 F.3d 1343, 69 U.S.P.Q.2d 1508, (Fed. Cir. 2004). Applicants' claims are directed to antibodies and immunocomplexes comprising antibodies. In *Noelle*, the Court of Appeals for the Federal Circuit addressed the issue of whether claims to antibodies fulfilled the written description requirement of 35 U.S.C. § 112, first paragraph. The court found that **"as long as an applicant has disclosed a '*fully characterized antigen*,' either by its structure, formula, chemical name, or physical properties, or by depositing the protein in a public depository, the applicant can then claim an antibody by its binding affinity to that described antigen."** 355 F.3d at 1349, 69 U.S.P.Q.2d at 1514. The court's finding dictates that applicants' claimed antibodies and immunocomplexes fulfill the written description requirement of 35 U.S.C. § 112, first paragraph.

The Examiner concedes that applicants have disclosed the amino acid sequences of the antigens recited in applicants' claims. (Office Action at 4.) The amino acid sequence of a protein is its "formula" or "chemical name." According to *Noelle*, providing the "formula" or "chemical name" of an antigen are ways of disclosing a "*fully characterized antigen*." Consequently, applicants' description of the "formula" or "chemical name" of the recited antigens discloses "*fully characterized antigens*." Thus, according to *Noelle*, applicants can claim antibodies by their binding affinity to these "*fully characterized antigens*." As in *Noelle*, applicants have fulfilled the written description requirement of 35 U.S.C. § 112, first paragraph. Accordingly, applicants respectfully request withdrawal of the rejection.

Applicants respectfully submit that this application is in condition for allowance. In the event that the Examiner disagrees, he is invited to call the undersigned to discuss any outstanding issues remaining in this application in order to expedite prosecution.

Please grant any extensions of time required to enter this response and charge any additional required fees to our deposit account 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, L.L.P.

Dated: July 16, 2004

By: _____

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